IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 268 OF 1997

Shri G.N. Ghorpade]
(Jahagirdar), through power] Appellant
of attorney Shri N.V. Kulkarni]

1) State of Maharashtra & Anr.]
2) Special Land Acquisition] Respondents
Officer No. II, Kolhapur]

Mr. A.K. Abhyaqnkar for Appellant.
Mr. G.P. Mulekar, G.P. for Respondent Nos. 1 & 2.

CORAM : A.S. OKA, J.
DATE : 7TH DECEMBER, 2007

JUDGMENT :

1) The submissions of the learned Advocates appearing for the parties were heard yesterday. The Appellant has taken an exception to the Judgment and Award dated 4th November 1996 passed by the learned Additional District Judge, Kolhapur in Land Acquisition Reference No. 74 of 1988. The reference was made at the instance of the Appellant under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The land subject matter of this reference is land bearing R.S. No.585, admeasuring 26 Ares (2600 sq. meters). The acquisition was made under the provisions of Maharashtra Regional and Town Planning Act, 1966, as the said land was reserved

for Hospital and staff quarters. It is not in dispute that the relevant date for determination of compensation in this case is 21st July 1986 i.e. the day on which the Notification under Section 6 of the said Act read with 126 of the said Act, 1966 was issued. The Award under Section 11 was made on 17th December, 1987. The claim made by the Appellant was at the rate of Rs.540/- per square meter before Land Acquisition Officer. By the impugned Judgment and Award, the market value of the land has been fixed at the rate of Rs.30/- per square feet. By preferring this appeal, the Appellant-claimant is seeking an enhancement in the compensation.

2) The learned Advocate appearing for the Appellant has invited my attention to various sale instances produced and proved by the Appellant-claimant. He mainly relied upon the sale instance at exhibit 51 of sale deed dated 24th March 1986 and sale instance at Exhibit 49 of sale deed dated 15th October 1987. He submitted that both the sale instances were in respect of the comparable lands. Relying upon the said instances and other sale instances, he submitted that the market value fixed by the Trial Judge is on the lower side and is inconsistent with the evidence on record. He submitted that a case is made out for grant of

enhancement. The learned A.G.P. pointed out that the sale instances relied upon by the Appellant are not in respect of comparable lands. He submitted that the sale instance at Exhibit 49 is a post Notification sale. He submitted that land subject matter of sale instance at Exhibit 51 is situated far away from the acquired land. He submitted that the compensation awarded by the Reference Court is just and proper.

3) I have given careful consideration to the submissions. It will be necessary to refer to the evidence of Shri Baburao Balwant Chaugule, constituted Attorney of the Appellant/claimant. He has described the situation of Ichalkaranji city as of the year 1986. He has stated that in the year 1986, there were 75,000 powerlooms at Ichalkaranji. He stated that the population of Ichakaranji city was in between 2 to 3 lacs in the year 1986. In Paragraph No. 3 of his deposition he has stated thus :

> "The acquired property is in the centre of the city. There was Post Office, bus stop, schools, colleges, Police Station, vegetable market and the banks near the acquired property in 1986. There were roads on all four sides of this property. The acquired property was suitable for commercial as well as residential purpose. To the south of the acquired property, there is undeveloped area of the city. The statue of Shivaji and the main S.T. Stand is at a distance of about 1000 to 1200 ft. from this property."

. Thereafter the witness has proceeded to refer the various sale instances which are relied upon by the Appellant. In the examination-in-chief, he stated that even in the outskirts of Ichalkaranji, the price of the lands was not to the extent Rs.38/- per sq. meter or more. It is pertinent to note that there is no serious challenge to whatever is stated by the said witness in Paragraph no. 3 of his examination-in-chief.

4) The second witness examined by the Appellant is one Shri Shrinik Manikant Shah who is a partner of Suyog Builders. He has been examined to prove the sale instance at Exhibit 49. The third witness examined is Kanyalal s/o Pritamdas Keshavani who has been examined to prove the sale instance at Exhibit 51 dated 24th March 1986. One Hanumant s/o Ganpati Patale has been examined to prove sale instance dated 29th June 1989 at Exhibit 55 and the last witness is Kamlakar s/o Vithoba Palankar who has been examined to prove the sale instance at Exhibit 57 dated 11th September 1985. Therefore, it will be necessary to refer to the sale instances. The said sale instance at Exhibit 57 is of a plot of land admeasuring 932 sq. feet bearing R.S. No.578 at Ichalkaranji. The date of

the transaction is 11th September 1985. Apart from the fact that the said sale instance is in respect of a smaller plot of land, the relevant date in the present case is 21st July 1986 whereas the said transaction is of 11th September 1985. The witness Kamlakar Palankar stated that the said plot was at a distance of 5 minutes of main road of Ichalkaranji. The witness further deposed that the plots of Medical Association were on the Western side of his plot and one Ramraj Bhangadia purchased the said plot from Medical Association at the rate of Rs.32/- sq. feet. Considering its location, this instance cannot be said to be of a comparable land.

5) The second instance is of sale deed dated 29th June 1989 of a plot admeasuring 130 sq. meters purchased by Chaundeshwari Sahakari Bank Ltd., Ichalkaranji. The sale instance deserves to be ignored for the simple reason that the sale has taken place three years after the relevant date.

6) Another sale instance at Exhibit 51 which is of a sale deed dated 24th March 1986 in respect of the land bearing R.S. No. 558 of Ichalkaranji admeasuring 457 sq. ft. The witness No. 3 Kanyalal Keshavani is the husband of the purchaser. He stated that the acquired land was at the

distance of 2000 feet from the property purchased by him. In the cross examination, he admitted that the Hospital which is constructed on the acquired land is at the inner side of the road and his plot was near the road. Thus, apart from the fact that the instance is of a small plot of land, considering its close proximity to the road as compared to the acquired land, the said instance cannot be said to be a comparable land.

7) That takes me to the consideration of the remaining sale instance of sale deed dated 15th October 1987 at Exhibit 49. The sale deed has been executed 13 months after the relevant date. By the said sale deed, M/s Suyog Builders purchased a plot of land admeasuring 2760 sq. feet out of the same R.S. No. 585 of which the acquired land forms part. The witness Shrinik Shah has deposed that Indira Gandhi Memorial Hospital which is constructed on the acquired land is on the southern side of his plot. He has stated that there is a road on the Northern side of the plot purchased by him and the said road is on the western side of the staff quarters. The date of the said sale instance is 13 months after the relevant date. The fact that the sale instance is in respect of a plot of land out of the same survey number of which acquired land forms part is very significant. It

is not axiomatic that the post Notification sale instances are to be totally ignored from the consideration. In a given case, post Notification sale instances can be certainly considered as a basis for determining the appropriate market value of the acquired land. In such cases, appropriate deduction can be made from the market value for arriving at the market value of the acquired land on the relevant date. In case of Gafar and others vs. Moradabad Development Authority ((2007)7 SCC 614), the Apex Court has held that a sale instance of a comparable land cannot be altogether discarded only on the ground that it is in respect of a smaller plot of land and on the basis of such sale instance, market value of the acquired land can be calculated by making requisite deductions. As in case of a larger plot, some cost is required to be incurred on the development. The market value reflected from the sale instance at Exhibit 49 is about 50.70 per sq. feet which can be taken as Rs.51/- per sq. feet. A suggestion was given to the witness Shrinik Shah that he has purchased a plot by giving an excess amount than the market value. He has denied the correctness of the said suggestion. It is pertinent to note that there is no reason suggested as to why the witness will purchase the land at the rate which is higher than the market value. It is not the case of the

Respondent that the said plot of land was a special property for the purchaser. In his cross examination, a suggestion has been given to the said witness by the learned Assistant Government Pleader that the acquired land was far away from the plot of the said witness and that his plot was towards the interior side. Thus the suggestion given to the said witness is that the plot which is subject matter of Exhibit 49 was towards the interior side as compared to the acquired land.

8) There cannot be any dispute that the acquired land and the land subject matter of Exhibit 49 form part of one contiguous survey number. Therefore it is certainly a comparable land. Considering the fact that the said instance is a post Notification instance, appropriate deduction will have to be made. Some deduction will have to be made on account of the fact that Exhibit 49 is in respect of a smaller plot of land. While doing so, it must be borne in mind that the land subject matter of Exhibit 49 is towards interior side as compared to the acquired land.

9) It is held by the Apex Court in the case of Gafar (supra) that fixation of the market value in a reference under Section 18 of the said Act inevitably involves an element of guess-work.

After considering the aforesaid factors, for arriving at market value of the acquired land, a deduction of 10 per cent will have to be made. On account of the fact that the plot of land subject matter of Exhibit 49 is must smaller than the area of the acquired land, further deduction will have to be made on account of development charges. After making an allowance for development charges considering the size of the acquired land, the market value of the acquired land will have to be reasonably fixed at the rate of Rs.40/- per sq. feet and to that extent the Appellant is entitled to an enhancement. Hence, I pass the following order :

O R D E R

(I) The impugned Judgment and Award is modified to the extent that the Appellant is entitled to market value calculated at the rate of Rs.40/- per square feet. In addition to the said market value, the Appellant will be entitled to the benefit under Section 23 (1-A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894.

(II) The Reference Court will calculate total compensation payable to the Appellant within a period of four months from the receipt of Writ of

this order.

(III) Balance amount payable by the Respondent will be paid to the Appellant within a period of three months from the date on which the Reference Court passes an order quantifying the compensation amount.

(IV) The Appellant will be entitled to proportionate costs of the Reference as well as this Appeal from the Respondent.

. Writ be sent early.

(A.S. OKA, J.)